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ADVISORY SERVICES AND TECHNICAL COOPERATION IN THE FIELD OF HUMAN RIGHTS

Report on the human rights situation in Burundi submitted by the independent expert, Akich Okola*

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* This document is submitted late so as to include the most up-to-date information possible.

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Summary

By its resolution 2004/82, adopted on 21 April 2004 at its sixtieth session, the Commission on Human Rights decided to appoint an independent expert to provide backing for the Government of Burundi in its efforts to improve the human rights situation. Pursuant to the resolution, Mr. Akich Okola, independent expert on the situation of human rights in Burundi, conducted his first mission to Burundi from 4 to 13 October 2004. The present report covers the period from 1 October to 31 December 2004 and is an account of his observations and recommendations with regard to the human rights situation in Burundi.

The independent expert's mission took place in a crucial period for the Burundi peace process, just a few weeks before the end of the 36-month transition period foreseen in the Arusha Peace and Reconciliation Agreement. He had the opportunity to conduct more than 50 meetings with State authorities, including the Vice-President of Burundi, the Minister of External Relations and Cooperation and the Minister of Institutional Reforms, Human Rights and Relations with the Transitional Parliament. The independent expert met officials from all political parties and several national institutions, national and international NGOs, diplomatic missions, United Nations agencies and international organizations, including the Special Representative of the Secretary-General in Burundi. He also visited an internally displaced people camp in the commune of Kabezi, Bujumbura Rural province, the site of Gatumba, where some 160 Congolese refugees were massacred. He also visited the central prison of Mpimba in Bujumbura.

Based on the information gathered, the independent expert addresses in section I of this report the political and security situation in Burundi. His main focus is on the latest developments in the peace process and the volatile situation at the end of the transition period on 30 October 2004, which has a negative impact on the overall human rights situation. Section II deals with the situation of civil and political rights in Burundi and violation of rights such as the right to life, liberty, security and inviolability of the person, freedom of movement and people's freedom to choose their residence, the rights to freedom of opinion, expression and peaceful assembly, the rights of women and children. He then analyses the situation with regard to economic, social and cultural rights, especially the right to health and education, and addresses the situation in the judicial and penitentiary sectors and strengthening of the rule of law. Section III contains the independent expert's observations and recommendations.

The independent expert would like to express his appreciation for the work of his predecessor, Ms. Marie-Thérèse A. Keita-Bocoum during the last five years. His observations and recommendations complement and sometimes concur with those formulated by the Special Rapporteur in her last reports. The independent expert was informed of a certain ambiance of fear before the elections among the population due to negative experiences in the past, the most recent being the crisis which followed the elections in 1993. The political parties within and outside the Transitional Government remain highly divided on essential issues, in particular on the issue of impunity regarding the successive massacres in the last 40 years. In this respect, he welcomes the mediation in the Burundian conflict and commends countries in the subregion on the progress that they have made towards securing a lasting peace solution.

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The subregional context is very explosive. This was once again demonstrated when the survivors from the Gatumba massacre were prevented from returning to the Democratic Republic of the Congo. An issue of particular concern is the fact that the large majority of the population is in illegal possession of small arms. In this regard, the independent expert supports the organization and holding of an international conference on peace, security, democracy and development in the Great Lakes region, as advocated by the Security Council and the Secretary-General.

The independent expert addresses an urgent appeal to all the belligerents, in particular in the province of Bujumbura Rural, to respect the rights of the civilian population and especially the right to life, security and inviolability of the person as well as to discontinue all hostilities. He strongly condemns the massacre committed against the civilian refugee population at Gatumba, Bujumbura, and would like to encourage the immediate initiation of national and international judicial proceedings to ensure that the perpetrators of the killings and those that aided and abetted them are brought to justice.

The independent expert would like to encourage the Burundian authorities to press ahead with the establishment of the institutions provided for by the Arusha Agreement, especially those relating to human rights, and in particular the establishment of an independent national human rights institution. He strongly recommends that the Government act promptly and transparently to implement the conclusions of the independent commission on issues relating to prisoners provided for by the Arusha Agreement.

The independent expert also recommends that the Burundian authorities, and in particular the Conseil national pour la défense de la démocratie/Forces pour la défense de la démocratie (CNDD-FDD) speed up the demobilization of child soldiers. Seriously concerned with the observed trend of rising sexual violence against women, the independent expert urges the Government to take a clear and strong position on this issue and to combat this phenomenon in collaboration with Burundian civil society.

The independent expert would like to recommend to the international community that the funds pledged at the Paris, Geneva and Brussels conferences be released and requests the international community to support the efforts of the Government of Burundi to encourage respect for and promotion of human rights and to secure lasting peace. Funding available to the independent expert to discharge his mandate is grossly disproportionate to the burden and magnitude of the task. He accordingly recommends that additional funding be made available in order to enable him to discharge his mandate with greater diligence.

The independent expert commends and supports the efforts of United Nations system agencies in Burundi, in particular the Office of the United Nations High Commissioner for Human Rights - Burundi (OHCHRB) and the United Nations Operation in Burundi (ONUB), the international community as well as civil society to ensure better protection and promotion of human rights and encourage them to strengthen their cooperation in this field.

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Introduction

1. By its resolution 2004/82, adopted on 21 April 2004 at its sixtieth session, the Commission on Human Rights decided to appoint an independent expert to provide backing for the Government of Burundi in its efforts to improve the human rights situation and requested the independent expert to consider the situation of human rights in Burundi and ensure that the authorities are honouring the commitments they have made, to submit an interim report on the implementation of this resolution to the General Assembly at its fifty-ninth session, and to report to the Commission at its sixty-first session.

2. Pursuant to that resolution and in response to the letter of the Chairperson of the Commission on Human Rights, Mr. Akich Okola formally accepted the appointment as independent expert on 22 July 2004. His first mission to Burundi was from 4 to 13 October 2004, and therefore, the independent expert was not able to submit an interim report to the General Assembly at its fifty-ninth session. The present report, which is his first, covers the period from 1 October to 31 December 2004 and is an account of his observations and recommendations with regard to the human rights situation in Burundi.

3. The mission to Burundi was preceded by a two-day mission to Geneva where the independent expert attended several briefings and met with staff from the Office of the United Nations High Commissioner for Human Rights (OHCHR), representatives of non-governmental organizations and of permanent missions, including the Burundian representative to the United Nations Office at Geneva.

4. In Burundi, the independent expert had the opportunity to conduct more than 50 meetings with State authorities, including the Vice-President of Burundi, the Minister of External Relations and Cooperation, the Minister of Institutional Reforms, Human Rights and Relations with the Transitional Parliament, the Chiefs of Staff of the Minister of Social Welfare and Promotion of Women, the Minister of Reintegration and Reinstallation of Internally Displaced and Returnees, the Minister of Justice and the Attorney-General, the Director-General of the Penitentiary Administration, the Minister of Peace Mobilization and National Reconciliation, the Minister of Public Security, the Minister of Good Governance and Inspection of the State, the President of the Constitutional Court and the First Vice-President of the Senate.

5. The independent expert also met with officials from all political parties and several national institutions such as the Governmental Commission on Human Rights, the National Council of the Bashingantahe, the National Independent Electoral Commission, the National Council of Communication, the National Commission for Rehabilitation of War-Affected Persons (Sinistrés), the President of the Bar Association and representatives of the trade unions. In addition, he met with national and international NGOs, diplomatic missions including the African Union and the European Commission, United Nations agencies and international organizations including the Special Representative of the Secretary-General in Burundi and senior staff of the peacekeeping Operation of the United Nations in Burundi (ONUB).

6. The independent expert also visited an internally displaced people camp in the commune of Kabezi, Bujumbura Rural province, the site of Gatumba, where some 160 Congolese refugees were massacred. He also visited the central prison of Mpimba in Bujumbura.

7. The independent expert would like to extend his special thanks to the Burundian authorities for facilitating his mission, to the Office of the United Nations High Commissioner for Human Rights - Burundi (OHCHRB) for its assistance in the organization of his mission as well as to all his interlocutors for their availability and willingness to exchange views on the human rights situation in Burundi and who contributed to the success of his mission.

8. The present report will address the general situation in Burundi with a special focus on the evolution of the political and human rights situation. The independent expert would also like to present to the Commission his observations and recommendations.

I. GENERAL SITUATION

9. The independent expert's mission took place in a crucial period for the Burundi peace process, just a few weeks before the end of the 36-month transition period foreseen in the Arusha Agreement.

10. After the signing of the global ceasefire agreement between the Transitional Government and the Conseil national pour la défense de la démocratie/Forces pour la défense de la démocratie (CNDD-FDD) of Pierre Nkurunziza in November 2003, the security situation in Burundi has improved as a whole. However, in the last few months and in particular since the Gatumba massacre in August 2004, the situation in the province of Bujumbura Rural has been deteriorating.

11. On 1 June 2004, ONUB took over the African Union Mission in Burundi (AMIB). Its full strength is 5,500 troops and 1,000 civilian personnel and its main mission is to assist the peace process, in particular electoral process, disarmament and mobilization as well as the reform of the armed and security forces. However, due to political disagreements and lack of ceasefire agreement with the Parti pour la libération du peuple hutu/Forces nationales pour la libération (PALIPEHUTU-FNL) of Agathon Rwasa, the last armed group outside the peace process, the whole process has been delayed.

12. The uncertainty regarding the post-transition period and the electoral timetable contributes to a growing tension within the political class which has a negative impact on the population. The post-transition draft constitution was adopted by the Congress (National Assembly and Senate) on 17 September 2004 but was initially boycotted by some of the predominantly Tutsi parties who, however, since the end of my visit have accepted the draft. It has not yet been endorsed by a referendum (initially scheduled on 20 October 2004 and now postponed to an unspecified date).

13. On 16 October 2004 in Nairobi, the regional heads of State endorsed the proposal of the National Independent Electoral Commission in which the current transitional Government would be extended for six months. The electoral schedule would be as follows: constitutional referendum in November 2004; legislative elections on 9 March 2005; senatorial elections on 23 March 2005; and on 22 April 2005, presidential elections. The Nairobi plan was approved by Burundi's Transitional Parliament on 20 October 2004 and the plan would act as an interim constitution. Some Tutsi-dominated parties belonging to the G-10 group (UPRONA, PARENA, MRC-Rurenzangemero, RADDES, PSD, PRP, ANADDE, INKINZO, PACONA and ALIDE) had objections regarding the summit's legitimacy and its decisions. However, just before

the end of the transition period, 31 October 2004, all but one party (PARENA, led by former President Bagaza), accepted the interim constitution which has been in force since 1 November 2004.

14. On 10 November 2004, Mr. Alphonse-Marie Kadege was relieved of his duties as Vice-President of Burundi by a presidential decree. On 11 November 2004, Mr. Frédéric Ngenzebuhoro was nominated to this position after approval of the National Assembly and the Senate

15. With regard to the election process, electoral commissions have been established; the census of the population as well as the establishment of the electoral lists has begun. The official electoral campaign was launched on 12 November 2004. However, the repeated delays concerning the holding of the referendum on the draft constitution could result in delay of the whole election process culminating with the presidential elections in April 2005.

16. The security situation remains worrying - ambushes and looting persist while fighting between the Burundian Armed Forces (FAB) and CNDD-FDD on one side, and PALIPEHUTU-FNL on the other, continues in the province of Bujumbura Rural. The independent expert has been informed of alleged recruitment by armed groups such as the CNDD-FDD of Léonard Nyangoma in the north-east provinces of Burundi. New forms of criminality such as armed robberies of restaurants and private residences as well as criminal ambushes have begun to emerge all over the country. It is in this context that one of the civilian staff of ONUB was killed on 25 September 2004.

17. The Security Council delegation visited Burundi from 23 to 25 November 2004 in order to evaluate the first six months of ONUB's deployment and assess the challenges faced by the operation. On 1 December 2004, the Security Council adopted resolution 1577 (2004) extending ONUB's mandate until 1 June 2005.

18. On 2 December 2004, the demobilization process of an estimated 55,000 former combatants was launched officially. A first group of 216 was demobilized in the province of Muramvya.

19. The volatile situation described above has had a negative impact on the human rights situation.

II. HUMAN RIGHTS SITUATION

20. The human rights situation is closely related to the progress in the peace process and the subregional context. Political instability is accompanied by lack of development, increased poverty and growing criminality.

21. In spite of continuous efforts by many national and international actors, human rights violations are still numerous, particularly with regard to the right to life. Most of these violations remain unpunished, which creates a climate conducive to more abuses, in particular regarding sexual violence.

A. Civil and political rights

22. The violations of human rights remain numerous and are a matter of serious concern. The principal human rights violations involve the right to life, liberty, security and inviolability of the person, freedom of movement and people's freedom to choose their residence, the rights to freedom of opinion, expression and peaceful assembly, and the rights of women and children.

23. The monitoring of the human rights violations is being gradually taken over by the Human Rights Section of ONUB, in accordance with the mandate given to it by the Security Council in its resolution 1545 (2004). The monitoring is being conducted in close cooperation with all partners and in particular with OHCHRB.

24. OHCHRB continued its activities aimed at reinforcing national capacities in the area of protection of human rights. It completed the first stage of setting up a network of national human rights observers throughout the country by a session held in Bururi for 70 national observers from eight provinces. Previous sessions were held in Bujumbura, Gitega and Ngozi, thus covering the whole country.

1. Violations of the rights to life, liberty, security and inviolability of the person

25. As mentioned before, the overall situation has improved in comparison to 2003 when more than 2,000 people were killed. However, the security situation is still alarming. In the first half of 2004, 235 killings have been recorded by the Ligue ITEKA, a Burundian human-rights non-governmental organization. These were perpetrated by armed groups such as FNL, ex-combatants, armed forces and bandits.

26. On 13 August 2004, the attack against the Gatumba transit centre resulted in the death of 152 Congolese refugees. An additional 106 were wounded and 8 remain missing. Of the dead and missing, an overwhelming majority, 147, were Banyamulenge. A joint OHCHR-ONUB-United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) report on the massacre was submitted to the Security Council in October 2004 for its consideration and action. In its resolution 1577 (2004), the Security Council called upon the Governments of the Democratic Republic of the Congo and of Rwanda to cooperate unreservedly with the Government of Burundi to ensure that the investigation into the Gatumba massacre is completed and that those responsible are brought to justice.

27. During the week preceding the mission of the independent expert to Burundi, more than 30 people were killed in the province of Bujumbura Rural, 20 of them reportedly FNL combatants.

28. The independent expert was also informed of reported mass graves in the province of Bujumbura Rural. Sources indicated that around 250 persons, allegedly executed over a period of months by FNL, were buried at two or three separate locations in the *secteur Gomvye, sous colline* Gacaca, *colline* Kivungwe, *commune* Mutambu. The investigations are still in progress.

29. During his mission, the independent expert met with a father whose two sons were killed on 1 August 2004, allegedly by ex-combatants of CNDD-FDD over a land dispute. He also met with a 14-year-old boy whose three brothers were killed allegedly by members of the armed forces in *commune* Mutambu, Bujumbura Rural province, on 19 September 2004.

30. The independent expert was informed that in the last three months OHCHRB investigated 21 cases of summary or arbitrary executions, 1 case of torture leading to death as well as 137 cases of arbitrary arrests or detentions. OHCHRB also investigated and followed up on the assassinations of 16 individuals, including one family of five people, in the provinces of Bururi, Bubanza and Bujumbura Rural.

31. The independent expert noted that in some cases the provisions of the Code of Criminal Procedures, particularly those concerning police custody and pre-trial detention, are not respected. He was informed that OHCHRB's intervention resulted in the release of 92 detainees from prisons and *cachots* in the provinces of Ngozi, Gitega, Bururi, Makamba, Rutana and Bujumbura Mairie. The main violations of the detainees' rights relate to incorrect specification of their offence, pre-trial detention exceeding the legal period, lack of complaints against them, lack of proof substantiating the detention and lack of arrest warrants.

32. The continuation of the practice of torture and other cruel, inhuman and degrading treatment, especially during the pre-detention period and in illegal places of detention such as military camps, was also brought to my attention. OHCHRB investigated a case where two military personnel, with the complicity of civilians, committed acts of torture leading to death. Both military personnel were arrested and are currently being prosecuted.

2. Violations of the right to freedom of movement and freedom to choose one's residence

33. About 145,000 of the 280,000 internally displaced persons (IDPs) in camps have returned home during the last year. According to United Nations reports, in April 2004, more than half of the remaining IDPs (mainly the population displaced due to the conflict between governmental forces and rebels since 1996) were willing to return, with some notable exceptions in a few provinces involving about 50,000 IDPs who were direct victims of the inter-ethnic violence in 1993. IDP returnees co-exist with refugee returnees (80,000 as of October 2004) in an environment of extreme poverty.

34. Parallel to the return movement, the continuing conflict in Bujumbura Rural provoked repeated displacement of the population in 2004. Between 40,000 and 80,000 people are displaced, and live either in host communities or sites (schools, temporary shelters), for varying periods (sometimes months or several years). The main concern remains the provision of protection and emergency assistance, both for IDPs and host communities.

35. With regard to refugees, in the period from 2002 to 2004, about 215,000 returned (80,000 in 2004, 82,000 in 2003 and 53,000 in 2002) to Burundi. However, the volatile political and security situation could result in an exodus of refugees such as has happened in the provinces of Kirundo and Makamba, where between 500 and 1,500 persons fled to, respectively, Rwanda and Tanzania.

36. The returnees face not only various violations of their physical integrity but also problems of reintegration such as recognition of education equivalence and others. Refugees who return spontaneously are sometimes forced to pay customs duties and taxes in violation of agreements signed by Burundi.

3. Violations of freedom of opinion, expression and peaceful assembly

37. Several representatives of political parties complained that article 263 of the Transitional Constitution does not allow them to hold public meetings and to campaign ahead of the upcoming elections. While this provision is justified by the possession of weapons by the population, it also excludes most of the parties, and particularly those which are outside the Government, from the pre-electoral process.

38. The independent expert met with trade-union representatives and political leaders who complained that some of their members are put in prison because of their political opinions. He had the opportunity to meet with two of them while visiting the central prison of Mpimba.

39. The independent expert was informed of the case of Mr. Pierre Claver and Mr. Célestin Nsavyimana, President and Treasurer, respectively, of the Confederation of Trade Unions of Burundi (COSYBU). They were arrested on 24 September 2004 in the offices of the organization and then held in custody in the premises of the "Documentation nationale", the Burundian intelligence services. Their detention was reportedly related to a critical memorandum they issued with regard to the adoption of the draft Constitution on 17 September 2004. After an intervention by OHCHRB, they were released on 30 September 2004.

40. During his visit to the prison of Mpimba, the independent expert met Mr. Diomède Rutamucero, president of the movement PA-Amasekanya. Accused of threats to State security and offence of the head of State, Mr. Rutamucero was detained in the premises of the Documentation nationale from 23 to 30 August 2004 and then at Mpimba, where he is still in detention.

4. Rights of women

41. An issue of particular concern is the trend of rising sexual violence against women, which has been observed during the last two years. While the overall security situation seems to have improved since 2003, sexual violence continues to rise: 863 cases of rape were reported during the first six months of 2004, compared to 963 for the whole of 2003. Most of these crimes remain unpunished, or when prosecuted are not treated by the authorities with the seriousness they deserve.

42. The independent expert was informed that the draft family and inheritance law was distributed to all ministries for comment in September 2004. Discussions on this draft have been ongoing for more than five years and it is important that the Government submits it to the Parliament in the near future.

43. He was also informed that the political parties agreed at the Pretoria meeting that 30 per cent of the seats in the new Parliament should go to women. The independent expert welcomes this decision as a step in ensuring increased gender balance at all levels and in particular at decision-making level.

44. OHCHRB, in collaboration with the Ministry of Social Welfare and Promotion of Women, completed the translation into Kirundi of the Convention on the Elimination of All Forms of Discrimination against Women.

5. Child rights

45. The situation of children in Burundi is extremely worrying. Children are affected not only by the war but also by the deteriorating economic situation and HIV/AIDS. The following figures give some idea of the seriousness of the situation - 160,000 AIDS orphans; 25,000 orphans as a result of the conflict; 180,000 children among the IDPs and refugees; and between 2,000 and 5,000 street children.

46. More than 100 children are being detained in prison - some of them below the age of 13, which is the legal majority according to Burundian law. In the prison of Mpimba, the independent expert met a boy aged 11 who was detained for several months and who was clearly mentally disabled.

47. War and poverty also affect the right to education - only 56 per cent net enrolment - the right to food - 56 per cent of children suffer from chronic malnutrition - and the right to health.

48. Burundi has ratified the Convention on the Rights of the Child and has signed but not yet ratified the Optional Protocol on the involvement of children in armed conflict. The majority of armed parties in Burundi have made commitments to end the use of child soldiers but some have reportedly continued to recruit and use them. Since November 2003, more than 2,260 child soldiers from armed forces and the civil defence militia known as *gardiens de la paix* have been demobilized and reintegrated into their families. Despite some progress, an estimated 2,000 child soldiers remain to be demobilized, mostly from CNDD-FDD. FNL of Agaton Rwasa has continued to recruit and use children.

B. Economic, social and cultural rights

49. According to the United Nations Development Programme (UNDP), Burundi ranks among the five nations with the lowest human development index in the world. Life expectancy at birth is 40 years, which represents a drop of roughly 10 years since 1993. Official statistics indicate that the proportion of the population living below the poverty line has remained well above 50 per cent in the last six years.

50. Frequent looting resulting from armed conflict and displacement have dispossessed whole communities of what few resources they had, including housing, land and cattle. The protracted situation of extreme poverty in Burundi compounded with the effects of 11 years of conflict and extensive population displacement, have led to intertwined layers of extreme vulnerability and disparities, especially across and within Burundian provinces.

51. Access to basic health and education services are still seriously constrained by structural factors related to the application of cost-recovery policies, and the lack of minimum investment in infrastructure, equipment and human resources.[1]

52. In the area of education, the current worrying situation is illustrated by the fact that only an estimated 50 per cent of children aged 5-15 years have access to primary education; 550,000 children did not attend school during the 2003-2004 school year and only 30 per cent of students complete primary school and continue on to secondary school. Access to primary schooling is below 50 per cent in some provinces such as Kirundo, Muyinga, Rutana and Ruyigi, and in some rural areas attendance rates reach only 35 per cent. The gender disparities in school enrolment are significant - 50 per cent of girls have access to primary school, compared to 63 per cent of boys. Primary school is fee-based and not obligatory, which leads to further access disparities across provinces and population groups. The shortage of classrooms and teachers leads to a teacher-pupil ratio of 80, with some classrooms hosting 100 students per shift. Literacy rates among adults in rural areas do not exceed 46-50 per cent, with considerable gender disparities.

53. The situation in the public health sector is also worrisome.[2] The crude mortality rate (between 1.2 and 1.9 per 10,000 per day) and the under-five mortality rate (ranging from 2.2 to 4.9 per 10,000 per day) exceed the rates of emergency situations. Maternal mortality (a rate of 855 per 100,000 per live births), which is above the regional average, constitutes one of the most important public health problems in Burundi. More than 65 per cent of the total population is less than 25 years of age but most adolescents do not have easy access to sexual and reproductive health information and services, with consequences such as unwanted pregnancies, unsafe abortions, higher maternal mortality rates, sterility, HIV and other STI infections.

54. Malaria accounts for 47 per cent of hospital deaths among children under 5 and 40 per cent of deaths of those treated at primary health centres. Malaria, meningitis and cholera epidemics occur regularly. Respiratory infections and diarrhoea are also frequent causes of morbidity and mortality. The causes of these diseases are often directly or indirectly related to extremely poor environmental conditions, poor hygiene practices and limited access to potable water.

55. The prevalence of HIV/AIDS is estimated at 6-8 per cent (with higher rates among women and young girls) and rapidly approaching the 9 per cent average of sub-Saharan Africa. The prevalence of HIV/AIDS is related to the increasing incidence of tuberculosis, both of which are closely linked with malnutrition as either a consequence of the disease or a vulnerability factor.

56. Many of the problems described above are the result of long-standing structural deficiencies of the public health sector: a critical lack of health personnel, extremely low salaries, poorly maintained infrastructures and lack of investment.

C. Justice system and the rule of law

57. The Arusha Agreement foresees reforms in the judicial system in order to improve the balanced and fair exercise of the rule of law in Burundi. Some of the legislative reforms have been implemented, i.e. the law attributing criminal jurisdiction to High Courts (*tribunaux de grande instance*), but as a whole implementation has been delayed and has had a limited impact.

58. On 4 November 2004, the law on the establishment of National Truth and Reconciliation Commission was approved by the National Assembly and the Senate. It was promulgated by the President of Burundi on 5 January 2005.

59. On 21 September 2004, a month after the Gatumba massacre, the Government of Burundi ratified the Statute of Rome, thus institutionalizing its adherence to the International Criminal Court.

60. The lack of financial, material and logistic resources such as paper, furniture, office equipment and means of transportation undermines the efforts deployed within the judicial system. It results in arbitrary detentions as well as lengthy detentions and pre-trial detentions. It also creates among the detainees the perception of partiality.

61. The issue of "political" prisoners has developed into a complex and potentially explosive issue. In order to address these problems, recourse has to be made to both political and technical solutions. The Minister of Justice has undertaken some urgent technical measures based on the provisions of the penitentiary law, the recommendations of the Mixed Independent Commission on prisoners of February 2002 and the recommendations of the Implementation Monitoring Committee (IMC). However, several interlocutors with whom the independent expert met stressed the need for a political solution to end the current prisoner impasse.

62. The independent expert was also informed of the existence in some areas of parallel justice and administration (tax collection, arbitrary detention, corporal punishment and even summary executions) practised by different actors, including FNL, CNDD-FDD and the armed forces. This situation is totally unacceptable and represents an important destabilizing factor, in particular during the pre-election and election period.

63. With regard to prisons, the situation has slightly improved during the last years due to the efforts deployed by the penitentiary administration and the technical and financial support of the international community. However, prisons remain overcrowded - 7,300 detainees at the end of September 2004, their capacity being for 3,750 inmates. This has a very negative impact on health, nutrition, sanitary conditions, access to water, etc.

64. The situation of women and child detainees remains difficult as well. With the exception of Ngozi, none of the provinces has specialized facilities. Furthermore, in the absence of a civil register, it is hard to know the exact age of detained minors - a practice which can give rise to abuses as I was able to witness at the prison of Mpimba.

65. In October 2004, OHCHRB, through its Legal Assistance Programme, assisted 280 defendants and plaintiffs before the high courts of Ngozi, Kayanza, Kirundo and Muyinga. Forty-seven defendants were granted provisional release. In November 2004, only a few cases were examined due to the fact that most of the high courts did not schedule sessions.

66. OHCHRB completed its programme, which started in December 2003, of informing detainees about their rights and the existing legislation. Information days were held for detainees in all 11 prisons in Burundi.

III. OBSERVATIONS AND RECOMMENDATIONS

67. **The independent expert would like to express his appreciation for the work of his predecessor, Ms. Marie-Thérèse A. Keita-Bocoum during the last five years. His observations and recommendations complement and sometimes concur with those formulated by the Special Rapporteur in her last reports.**

68. **The independent expert was informed of a certain ambiance of fear before the elections among the population due to negative experiences in the past, the most recent being the crisis which followed the elections in 1993. Tension between the two ethnic groups is present and there is distrust among the political parties within and outside the transitional Government. They remain highly divided on essential issues, in particular the issue of impunity regarding the successive massacres in the last 40 years. In this respect, he welcomes the mediation in the Burundian conflict and commends countries in the sub-region on the progress that they have made towards securing a lasting peace solution.**

69. **Some representatives of the Tutsi group are claiming that genocide against them is in the making. To substantiate their claim, they point to the Gatumba massacre, the killing of Tutsi motivated by accusations of witchcraft and poisoning, and intimidation and threats which led to the flight of some 500 Burundian Tutsi to Rwanda. Moreover, an issue of particular concern is the fact that the large majority of the population is in illegal possession of small arms.**

70. **The sub-regional context is very explosive. This was once again demonstrated when the survivors from the Gatumba massacre were prevented from returning to the Democratic Republic of the Congo. In this regard, the independent expert supports the organization and holding of an international conference on peace, security, democracy and development in the Great Lakes region, as advocated by the Security Council and the Secretary-General.**

71. **The independent expert addresses an urgent appeal to all the belligerents, in particular in the province of Bujumbura Rural, to respect the rights of the civilian population and especially the right to life, security and inviolability of the person as well as to discontinue all hostilities.**

72. **He strongly condemns the massacre committed against the civilian refugee population at Gatumba, Bujumbura, and would like to encourage the immediate initiation of national and international judicial proceedings to ensure that the perpetrators of the killings and those that aided and abetted them are brought to justice.**

73. **The independent expert would like to encourage the Burundian authorities to press ahead with the establishment of the institutions provided for by the Arusha Agreement, especially those relating to human rights, and in particular the establishment of an independent national human rights institution.**

74. **He strongly recommends that the Government act promptly and transparently to implement the conclusions of the independent commission on issues relating to prisoners provided for by the Arusha Agreement.**

75. **The independent expert also recommends that the Burundian authorities, and in particular CNDD-FDD, speed up the demobilization of child soldiers.**

76. **Seriously concerned with the observed trend of rising sexual violence against women, the independent expert urges the Government to take a clear and strong position on this issue and to combat this phenomenon in collaboration with Burundian civil society.**

77. **The independent expert would like to recommend to the international community that the funds pledged at the Paris, Geneva and Brussels conferences be released and requests the international community to support the efforts of the Government of Burundi to encourage respect for and promotion of human rights and to secure lasting peace.**

78. **Funding available to the independent expert to discharge his mandate is grossly disproportionate to the burden and magnitude of the task. He accordingly recommends that additional funding be made available in order to enable him to discharge his mandate with greater diligence.**

79. **The independent expert commends and supports the efforts of United Nations system agencies in Burundi, in particular OHCHRB and ONUB, the international community as well as civil society to ensure better protection and promotion of human rights and encourage them to strengthen their cooperation in this field.**

Notes

[1] *Source:* Consolidated Appeal Process (CAP), OCHA/CAP/2004/57, October 2004.

[2] Joint Health and Nutrition Needs Assessment, WHO/UNICEF, Burundi, April 2004.

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